

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

CONGREGATION JESHUAT ISRAEL,

Plaintiff,

v.

CONGREGATION SHEARITH ISRAEL,

Defendant.

C.A. NO. 12-822-M (LDA)

MOTION TO COMPEL

Plaintiff and counterclaim-defendant Congregation Jeshuat Israel (“Jeshuat Israel”), by its undersigned counsel, hereby moves pursuant to Fed. R. Civ. P. 37(a) for an order (i) compelling defendant and counterclaim-plaintiff Congregation Shearith Israel (“CSI”) to produce on or before May 11, 2015 a document referenced by CSI’s expert, Dr. Vivian Mann, at her deposition, or, if CSI claims that it is unable to find that document, (ii) requiring CSI to provide the Court and Jeshuat Israel on or before May 11, 2015 with a full account of what happened to the document.

Respectfully Submitted:

CONGREGATION JESHUAT ISRAEL,

By Its Attorneys,

PARTRIDGE SNOW & HAHN LLP

/s/ Steven E. Snow

Steven E. Snow (#1774)

40 Westminster Street, Suite 1100

Providence, RI 02903

(401) 861-8200 / (401) 861-8210 FAX

ses@psh.com

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Gary P. Naftalis (admitted *pro hac vice*)

Jonathan M. Wagner (admitted *pro hac vice*)

Tobias B. Jacoby (admitted *pro hac vice*)

Daniel P. Schumeister (admitted *pro hac vice*)

1177 Avenue of the Americas

New York, NY 10036

(212) 715-9253 / (212) 715-9238 FAX

gnaftalis@kramerlevin.com

jwagner@kramerlevin.com

tjacoby@kramerlevin.com

dschumeister@kramerlevin.com

DATED: May 1, 2015

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of May, 2015, I caused a true copy of the within document to be delivered through the ECF system to all counsel of record.

/s/ Steven E. Snow

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

CONGREGATION JESHUAT ISRAEL,

Plaintiff,

v.

C.A. NO. 12-822-M (LDA)

CONGREGATION SHEARITH ISRAEL,

Defendant.

MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION TO COMPEL

Plaintiff and counterclaim-defendant Congregation Jeshuat Israel (“Jeshuat Israel”) respectfully submits this memorandum in support of its motion pursuant to Fed. R. Civ. P. 37(a) to compel defendant and counterclaim-plaintiff Congregation Shearith Israel (“CSI”) to produce a potentially important document in advance of trial.

Five separate times during her December 31, 2014 deposition, CSI’s expert Dr. Vivian Mann testified to a specific record that she found in CSI’s archives. According to Dr. Mann, the record was created “shortly after” 1833 and documents the transfer of “the silver that had been used in Newport” from the family of Moses Seixas, a “parnas” or chief administrative officer of Congregation Yeshuat Israel in 18th century Newport, “to CSI for safekeeping.” (Exh. 1 at 19:5—21:22, 96:16—97:4, 164:11—164:25 (and errata sheet at p.2), 209:8—211:11, 276:3-8). Dr. Mann testified that this record relates to silver rimonim. (*Id.*).

After Jeshuat Israel learned of the existence of this potentially relevant – and unproduced – material at Dr. Mann’s December 31 deposition, Jeshuat Israel immediately began

asking CSI to produce it.¹ Jeshuat Israel requested the material at the deposition and in e-mails dated January 5, January 16, and March 31, 2015. (Exh. 3). CSI never responded to Jeshuat Israel's repeated requests. When Jeshuat Israel raised at the April 14, 2015 conference with the Court CSI's failure to produce this material, CSI's counsel finally said that CSI had not been able to find the material referenced by Dr. Mann. The next day, CSI's counsel sent an e-mail stating that counsel was "rechecking." (*Id.*). Counsel also suggested that the material may be contained in a supplemental report issued by Dr. Mann. (*Id.*). No such reference exists.

By April 24, 2015, nearly four months after Jeshuat Israel first started asking for the material referenced by Dr. Mann, CSI still had not produced the document. Accordingly, Jeshuat Israel asked CSI to produce the material by April 29, 2015 or inform Jeshuat Israel by that date if the material does not exist. (*Id.*). April 29 date came and went without a response from CSI. Thus, despite Jeshuat Israel's good faith attempts to resolve this issue, CSI has neither produced the material nor informed Jeshuat Israel that it does not exist.

The Court should order that CSI produce the material described by Dr. Mann on or before May 11 to ensure that Jeshuat Israel receives it well in advance of trial, which is scheduled to start on May 27.

The material may well be relevant to issues that will be tried before the Court. For example, a central dispute between the parties concerns whether – to the extent Shearith Israel held the Rimonim in the 19th century – it did so for safekeeping only or as absolute owner. The material described by Dr. Mann relates directly to this dispute. CSI therefore has no legitimate basis to withhold the document, and CSI's refusal to produce the document will significantly prejudice Jeshuat Israel.

¹ The material is responsive to Jeshuat Israel's documents requests, served in August 2013. (Exh. 2).

If CSI continues to claim that it cannot find the material that Dr. Mann reviewed in CSI's archives, then CSI should provide Jeshuat Israel and the Court with a full account of what happened to the document so that Jeshuat Israel may determine whether to seek appropriate relief, including but not limited to an adverse inference.

Conclusion

For these reasons, the Court should grant Jeshuat Israel's motion and compel CSI to produce the document referenced by Dr. Mann at her deposition, or, if CSI claims that it cannot find the document, order that CSI provide a full account of what happened to the document.

CONGREGATION JESHUAT ISRAEL,

By Its Attorneys,

PARTRIDGE SNOW & HAHN LLP

/s/ Steven E. Snow

Steven E. Snow (#1774)
40 Westminister Street, Suite 1100
Providence, RI 02903
(401) 861-8200 / (401) 861-8210 FAX
ses@psh.com

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Gary P. Naftalis (admitted *pro hac vice*)
Jonathan M. Wagner (admitted *pro hac vice*)
Tobias B. Jacoby (admitted *pro hac vice*)
Daniel P. Schumeister (admitted *pro hac vice*)
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9253 / (212) 715-9238 FAX
gnaftalis@kramerlevin.com
jwagner@kramerlevin.com
tjacoby@kramerlevin.com
dschumeister@kramerlevin.com

DATED: May 1, 2015

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of May, 2015, I caused a true copy of the within document to be delivered through the ECF system to all counsel of record.

/s/ Steven E. Snow

2481869_1/7804-2